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7 on behalf of himself, the State of California,
8 and PAGA Members

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10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF PLACER**

12
13 HAMIT UTUSH,

14 Plaintiff,

15 v.

16 BANK OF THE SIERRA, a California
17 Corporation; and DOES 1-20.

18 Defendants.

Case No. S-CV-0047143

**~~PROPOSED~~ ORDER APPROVING
PLAINTIFF'S PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT AND
DISMISSING PAGA CLAIMS WITH
PREJUDICE**

Date: December 14, 2021

Time: 8:30 AM

Dept.: 40

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**[PROPOSED] ORDER GRANTING APPROVAL OF PAGA SETTLEMENT
AND DISMISSING PAGA CLAIMS WITH PREJUDICE**

1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2 The Motion to Approve Private Attorneys General Act Settlement (“Motion”) in the above
3 referenced case came before this Court, on December 14, 2021, in Department 40. Named Plaintiff
4 Hamit Utush (“Plaintiff”) filed this Private Attorneys General Act (“PAGA”) action on August 10, 2021.
5 The Complaint alleges facts relating to the following violations of the Labor Code: Failure to Pay
6 Minimum Wage for All Hours Worked; Failure to Provide Accurate Wage Statements; Failure to
7 Provide Meal and Rest Periods; Waiting Time Penalties; Failure to Pay Overtime Wages; failure to
8 reimburse business expenses; and Civil Penalties under PAGA.¹ Defendant has denied all of Plaintiff’s
9 allegations.

10 The parties have agreed to a settlement of Plaintiffs’ claims and the dismissal of the Complaint
11 with prejudice. Defendant will provide monetary consideration in exchange for a release of claims and
12 dismissal consistent with the terms of the Private Attorneys General Act Settlement (“Settlement
13 Agreement”). The Court, having received and considered Plaintiff’s Motion, the declaration in support,
14 the Settlement Agreement, the Notice of Settlement, and other evidence, **HEREBY ORDERS AND**
15 **MAKES DETERMINATIONS AS FOLLOWS:**

16 **1. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – SIMILARLY**
17 **SITUATED EMPLOYEES**

18 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
19 PAGA claims asserted in this litigation and is authorized to act as a private attorney general with respect
20 to the PAGA claims being released under the proposed Settlement Agreement. The Court finds the
21 individuals (“Similarly Situated Employees”) included within the scope of the Settlement Agreement are
22 as defined by the Parties in the Settlement Agreement.

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27 ¹ Plaintiff’s Complaint also included causes of action for Discrimination in violation of FEHA, failure to
28 accommodate in violation of FEHA, and Unfair Competition. These non-Labor Code and non-PAGA
claims are not subject to the requirement that the Court approve any settlement.

1 **2. APPROVING THE SETTLEMENT AGREEMENT**

2 The Court has reviewed the Settlement Agreement, which was submitted with the Motion as
3 **Exhibit A.** The Court finds that the Settlement Agreement is fair, reasonable, and adequate and
4 approved as required under California Labor Code section 2698, *et seq.* Based on the amount of
5 penalties at issue, the risk of loss on the merits, the risk of being able to prove violations in each pay
6 period as to each individual as required by statute for damages purposes, and the Court's statutorily
7 authorized power to reduce penalties, the Settlement Agreement represents a substantial recovery for
8 individuals within the scope of the PAGA claims and the Labor and Workforce Development Agency to
9 further its purpose in enforcing the Labor Code. The Court also finds that the Settlement Agreement
10 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
11 furthering the purpose of the Labor Code and Labor and Workforce Development Agency.

12 The Court approves of the PAGA penalty allocations set forth in the Settlement Agreement
13 wherein the Net Settlement Amount shall be allocated as the 75% share of civil penalties pursuant to the
14 allocation set forth in Labor Code section 2699(i) to be paid to the Labor and Workforce Development
15 Agency, with 25% share of civil penalties pursuant to the allocation set forth in Labor Code section
16 2699(i) to be paid to the PAGA Group.

17 The Court approves of the releases set forth in the Settlement Agreement, which encompass all
18 claims Plaintiff pled against Defendants in the letter to the Labor and Workforce Development Agency,
19 the Complaint, *i.e.*, claims under the Private Attorneys General Act, Cal. Lab. Code sections 2698, *et*
20 *seq.* based on the underlying alleged violations of the Labor Code or that could have been brought based
21 on the alleged violations of the Labor code, as alleged in the PAGA Letter and operative complaint. The
22 individuals and/or entities released shall include Defendants and each of Defendants' respective past,
23 present and future parents, subsidiaries, principals and any other person, corporation, association or
24 partnership responsible for the claims made in the PAGA Letter or the Lawsuit, and the past, present and
25 future shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, and
26 successors and assigns.

27 Additionally, because the Court finds the parties' settlement to have been agreed upon only after
28 significant investigation and arms-length negotiations in mediation, and in an attempt to avoid further

1 delays and costs, the Court grants approval to the settlement, which is incorporated by reference in its
2 entirety, as if stated here in full.

3 The Court finds that the Common Fund Doctrine is applicable to this case because there is a
4 sufficiently identifiable class of beneficiaries (*i.e.*, the Similarly Situated Employees and the Labor and
5 Workforce Development Agency), the benefits can be accurately traced as set forth in the Settlement
6 Agreement, Plaintiff and Plaintiff's counsel were able to negotiate on behalf of the beneficiaries, and the
7 fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum
8 percentage of the common fund. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th
9 Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1
10 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of 35% of the common fund
11 (\$28,000.00) to be appropriate compensation for Plaintiff's counsel. The attorneys' fees request is
12 within the range that has been approved by other Courts in similar cases and reasonable in light of the
13 circumstances of this case, the results obtained on behalf of the Similarly Situated Employees and the
14 Labor and Workforce Development Agency, and the contingent nature of the recovery over the course
15 of this case, which included potential loss at summary judgment, and/or trial proceedings. Additionally,
16 the Court orders that costs of \$757.00 be paid to class counsel for reasonable costs incurred in this case.

17 The Court approves Simpluris as the Claims Administrator to perform the administration of the
18 PAGA Settlement in accordance with the Settlement Agreement, and whose costs shall not exceed
19 \$2,995.00 as provided for in the Settlement Agreement, Declaration of Counsel, and quote provided by
20 Simpluris.

21 **3. APPROVAL OF THE NOTICE OF SETTLEMENT**

22 The Court finds that the Notice of Settlement, which was included as **Exhibit D** to the Motion,
23 fairly and adequately advises individuals affected by the Settlement Agreement of its terms and effect.
24 The Court further finds that the Notice of Settlement and distribution of such notice by first class mail to
25 each identified Similarly Situated Employees at his or her most recent address based on a National
26 Change of Address database search from the class members' last known address and a skip trace on any
27 Similarly Situated Employees who have the class notice returned as "undeliverable" or "not at this
28 address" comports with all constitutional requirements, including those of due process.

1 **4. IMPLEMENTATION SCHEDULE**

2 Accordingly, with good cause shown, the Court hereby approves the Settlement Agreement and
3 the implementation schedule identified in the Settlement Agreement and orders said implementation
4 schedule be adhered to.

5 **5. DISMISSAL WITH PREJUDICE**

6 IT IS FURTHER ORDERED that Plaintiff's PAGA claims shall be dismissed with prejudice in
7 their entirety and as to all Parties as set forth in the Settlement Agreement, with each party to bear its
8 own fees and costs outside of what has been ordered herein. This matter is subject to the Court's
9 continuing jurisdiction to monitor and enforce the terms of this order and the approved Settlement
10 Agreement pursuant to California Civil Procedure Code section 664.6. In any action to enforce the terms
11 of the Settlement Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and
12 costs.

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14 IT IS SO ORDERED.

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16 Date: 12/14/2021

By: 
 /s/ Hon. Trisha Hirashima
 Judge of the Superior Court